

**BAKER
&
HOSTETLER**
COUNSELLORS AT LAW

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FAX (202) 861-1783 • TELEX 2357276
WRITER'S DIRECT DIAL NUMBER (202) 861-1580

RECEIVED

SEP 26 1994

July 13, 1993

BY HAND

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Martin R. Leader, Esquire
Fisher Wayland Cooper & Leader
1225 23rd Street, NW
Suite 800
Washington, D.C. 20037-1170

Re: Scripps Howard Broadcasting Company
MM Docket 93-94
Production of Documents

Dear Martin:

The attached documents were inadvertently omitted from the documents produced on June 28, 1993 by Scripps Howard Broadcasting Company ("Scripps Howard"). The documents respond to the request for production as follows:

SH0010582 to SH0010598 respond to request (i);
SH0010599 to SH0010601 respond to request (j);
SH0010602 responds to request (e);
SH0010603 and SH0010609 respond to request (b);
SH0010610 to SH0010611 respond to request (e);
SH0010618 to SH0010621 respond to request (f);
SH0010622 responds to request (i);
SH0010623 to SH0010627 respond to request (b).

In addition, there exist two letters from Audience Research and Development (AR&D) to Bob Feldman, dated June 5, 1991 and June 19, 1991 regarding WMAR-TV's news programming. Neither of these letters relates to the substantive content of WMAR-TV's news programs. Instead, they relate to the presentation style of this news programming. The documents contain highly sensitive and proprietary information that is not relevant to any issues in this

CLEVELAND, OHIO
(216) 621-0200

COLUMBUS, OHIO
(614) 228-1541

DENVER, COLORADO
(303) 861-0800

HOUSTON, TEXAS
(713) 751-1800

LONG BEACH, CALIFORNIA
(310) 432-3827

LOS ANGELES, CALIFORNIA
(213) 624-2400

ORLANDO, FLORIDA
(407) 648-4000

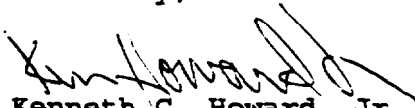
Federal Communications Commission	
Docket No.	93-94 Exhibit No. 30
Presented by	Four Jackson
Disposition	Identified 9/8/94
	Received 9/8/94
	Rejected
Reporter	Maria M. Kelly
Date	9/8/94

proceeding. Scripps Howard objects to the production of these documents. If production is sought, Scripps Howard will object to such production and ask the Presiding Judge for in camera inspection of the documents.

Finally, Janet Covington, the former public relations director of WMAR-TV who retired in December, 1991, at one time possessed personal notes that recorded various ascertainment meetings in which she participated during the relevant period. These notes were not retained in any files at WMAR-TV. Scripps Howard recently contacted Ms. Covington to ascertain whether she possessed any of these notes and determined that she did not.

If you have any questions regarding this matter, please contact me.

Sincerely,



Kenneth C. Howard, Jr.
Counsel for
Scripps Howard
Broadcasting Company

cc: The Honorable Richard L. Sippel (without documents)
Norman Goldstein, Esquire (with documents)
Robert Zauner, Esquire (without documents)

EXHIBIT 1

DOCKET FILE COPY ORIGINAL

RECEIVED

SEP 26 1994



FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 25, 1993

TO: DAVE ROBERTS

FROM: EMILY BARR *EB*

RE: REQUEST FOR DOCUMENTS

Attached please find the original documents you requested earlier this week. The following items are included:

The Morning Show: Memos and personal notes regarding its development and implementation.

Personal Calendars: Janet Covington's original notes to me were prepared specifically for this license challenge issue but she did not save her actual calendar. Howard Zeiden no longer has his 1991 calendar either. The other individuals listed on the ascertainment interviews did not retain their personal calendars, however, their participation in these meetings can be substantiated, in virtually all cases, by checking either Arnie's, Maria Velleggia's or my calendar. In those cases, their names or initials were written alongside the names of the community/business leaders with whom we met.

News and Public Affairs Personnel: Job descriptions, qualifications (in the form of resumes, bio's, etc) and hours of work are included. These were taken from personnel files so you will not be receiving original documents at this time.

Tape Index: Attached.

cc: Arnie Kleiner
Terry Schroeder
Frank Gardner



Federal Communications Commission

Docket No. 93-94 Exhibit No. 31

Presented by Farm Bureau

Disposition { Identified 9/8/94
Received X 9/8/94
Rejected _____

Reporter James M. Hickey

Date 9/8/94

SEP 26 1994

Declaration of Emily L. Barr

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

I, Emily L. Barr, based on my personal knowledge, state the following:

1. On February 9, 1994, I had a meeting with Stephanie S. Abrutyn, an attorney with Baker & Hostetler.

2. At one point during our meeting, I opened one of the file cabinets in my office to look for a memorandum that I had sent to Baker & Hostetler in order to refresh my recollection as to the date that I had sent the memorandum and other materials to Baker & Hostetler. A copy of this memorandum is attached hereto as Exhibit 1. I immediately reached for the file entitled "MEMOS TO B & H" to look for the memorandum. The only things that I had personally placed in the "MEMOS TO B & H" file were copies of memoranda that I or Arnold J. Kleiner had written to Baker & Hostetler, without attachments. Any attachments to the memoranda were filed separately by subject matter in different files. Thus, in the course of previous searches of my files, I never looked in the "MEMOS TO B & H" file because these memoranda already had been sent to counsel, and, as I stated above, there would be no reason for any of the documents for which I was looking to have been in that file.

3. While looking in this "MEMOS TO B & H" file on February 9, 1994, I discovered a photocopy of the notes that Janet Covington had prepared and given to me in 1992 to assist my efforts to gather and memorialize information about WMAR-TV's ascertainment contacts between May 30, 1991 and September 30, 1991. A copy of these 1992

Federal Communications Commission

Docket No. 93 94 Exhibit No. 32

Presented by John Jack

Disposition { Identified 7/8/94
Received 7/8/94
Rejected _____

Reporter Paula M. Kelly

Date 7/8/94

Covington notes is attached hereto as Exhibit 2. The copy of the 1992 Covington notes that I discovered also contained a cover sheet which was a photocopy of a "post-it" note that I had written. A copy of that "post-it" note is attached hereto as Exhibit 3. The copy of the 1992 Covington notes that I discovered also contains notations made by me while I was transferring the notes to the format provided to me by Baker & Hostetler, which eventually became Attachment E to my written direct testimony.

4. I do not recall ever making a copy of the 1992 Covington notes, nor do I know how the copy that I discovered ended up in the "MEMOS TO B & H" file. Until I discovered the copy that morning, I believed that I had discarded the 1992 Covington notes and that no copies of the notes had been made or retained.

5. I have attempted to recall how the copy could have been made or retained without my knowledge. As for the existence of the copy, I assume that I must have asked my secretary at the time, who is no longer employed by WMAR-TV, to copy all documents that were forwarded to Baker & Hostetler. I also assume that, at some point, she must have misfiled the copy of the 1992 Covington notes in the "MEMOS TO B & H" file rather than the proper file which contains copies of the original calendars used in this proceeding, a file which I had checked.

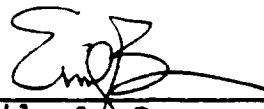
6. As for the retention of the copy, I turned over more than 10,000 pages of documents to Baker & Hostetler in connection with this matter, including immense volumes of exhibits. I had and continue to have no recollection of having sent the 1992 Covington

notes to Baker & Hostetler. When I examined the file in which the notes should have been retained and discovered that they were not there, I assumed that I must have discarded them, and I so testified at the hearing.

7. After my discovery of the copy of the 1992 Covington notes, Baker & Hostetler informed me that Ms. Covington's original 1992 notes had been found in their files. Prior to that, I believed that I had thrown those notes away. I still have no recollection of sending or copying the 1992 Covington notes, and as I stated above, it did not occur to me to look in the "MEMOS TO B & H" file for the 1992 Covington notes, or any other documents, because the only items that were supposed to be in that file were copies of memoranda, without attachments, that Mr. Kleiner or I had sent to Baker & Hostetler.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 15, 1994



Emily L. Barr



June 25, 1993

TO: DAVE ROBERTS

FROM: EMILY BARR *EB*

RE: REQUEST FOR DOCUMENTS

Attached please find the original documents you requested earlier this week. The following items are included:

The Morning Show: Memos and personal notes regarding its development and implementation.

Personal Calendars: Janet Covington's original notes to me were prepared specifically for this license challenge issue but she did not save her actual calendar. Howard Zeiden no longer has his 1991 calendar either. The other individuals listed on the ascertainment interviews did not retain their personal calendars, however, their participation in these meetings can be substantiated, in virtually all cases, by checking either Arnie's, Maria Velleggia's or my calendar. In those cases, their names or initials were written alongside the names of the community/business leaders with whom we met.

News and Public Affairs Personnel: Job descriptions, qualifications (in the form of resumes, bio's, etc) and hours of work are included. These were taken from personnel files so you will not be receiving original documents at this time.

Tape Index: Attached.

cc: Arnie Kleiner
Terry Schroeder
Frank Gardner



Emily

(1)

EXHIBIT 2

- September 3 9 AM - Met with Townsquare Festival re:
rest and support - Agreed to do PSA and
announcement of feature story ideas

Sept 3 - 2 PM. Meeting with Ray Jenkins, editorial
writer of Sun, Jack Epstien, educator,
Karen Wilson to determine theme +
guests for 4 breakfasting series for
NCCJ. Topic: Widening the Mainstream
how to encourage businesses to strive
for more diversity in workplace +
promote inter-group understanding.
Speakers identified for each session.
Subsequently, I called on Hutchinson, head of MESA
+ incoming pres. of Md. Chamber of Commerce
to kick off series.

Sept 4

9 AM Metro Classes Meeting - Planning
for ^{high school} championships basketball games (4)
and involvement of ^{other} students in the
volunteer cadre needed prior to and
day of event. Channel 2 agreed to a
series of player profiles on sports and
to PSA campaign to promote event.

2 PM - met with PR - Balt Museum of Art - about
promotion of Monet exhibit thru PSA + new
public affairs program

Sept 5

7:30 Stanley Sollins Memorial Breakfast
at this posthumous salute to a
legendary humanitarian - talked
with Dr. Clem Kaufman about spec-
inner - city education program be-
related to UMBC for possible on - air
at glorion

2

~~Sept 5~~ - 6 PM - Dinner honoring Shirley Marcus, former head of Baltimore Department of Social Services who was leaving to be deputy director of The Childrens Defense Fund in Washington D.C. (Shirley member of Channel 2's Advisory Committee)
Talked with Judge Robert Watts about youth crime and the need for recreational after school activities for young people

~~Sept 6~~ ^{10 AM} Met with Lisa Williams - Ex. Dir. Md. Office for Handicapped Individuals about developing PSA's to promote compliance with handicapped parking spaces - Agreed to let, also discussed other handicapped issues + ideas for accessing media through news + feature stories
3 PM - Met with Jo Ann Long from State Drug Commission to discuss on-going local efforts of prevention

~~Sept 10~~ ^{9:30 AM} - Final Fund - Long Range Planner Mtg. Discussed strategies to increase return on 36+E envelope campaign
meeting with Billboard company, Penn Advertiser suggested - Collect - arranged no for day.

Sept. 11

3 P.M. meeting with Penns Advertising
+ First Eagle Board members. Channel 2
Art director attended - Fruitful -
Got pro-bono commitment - promise of
20 three-out ads - Channel 2 agreed
to do art work -

5:30 - Meeting of Humanitarian Dinner
Committee

September 12 -

7:30 - Minority Business Association
breakfast (in conjunction with Md.
Chamber of Commerce) - Andy Young
speaker - Workshops between b'f and
and

12:00 Minority Business Assoc. Lunch
Channel 2 had tables to both breakfast
lunch -

September 13 -

noon - Public relations committee meeting
with Family + Childrens - Increasing
visibility for agency strategies done
and conditioning staff to recognize news
story potentials in services delivered
to underserved + families

September 16 11 A.M. - First of several meetings
scheduled with Ellen Kohler of Brito
City Rejuvenation Program to develop F&C

campaign + story ideas to alert people to
 pending curb side recycling in Balt.
 City and to encourage citizen participation.
 We agreed to produce spots.

Sept 16 - 6 PM - Meeting Y M C A Martin Luther
 King B'fest Committee - decided to
 ask Taylor Branch to be speaker
 Channel 2 to do PSA - Also to be a corporate
 sponsor -

Sept 17 - 2 PM - Rev. Dan Horner - an AIDS
 victim Rev. Horner dedicating his life
 to speaking out - Target audience
 young blacks - Worked on PSA message
 we agreed to produce in cooperation
 with a 501-C3 non-profit

Sept 19 - 2 PM - Met with Ellen Kohn again
 on storyboards + other aspects of
 City's recycling campaign

6 PM - NAACP Unity Banquet

Sept 24 - Town Meeting Crime - Studies and
 - which Channel 2 assembled represented
 contacts with cross section of neighborhoods
 and community well organizations that
 reflected the diversity of the city and
 the commonality of the concern

Sept. 25 -

Talked with Peto & Whelan representation
re: promotion of Peto Wellbalm -
Developed possible future story lines -
agreed to produce PSA -

Sept 26. 2:30 PM - Down Patrol Meeting - to
form up invention series + promote
strategies to gain attendance of business

Sept 27. Fresh Fund Board Meeting

Sept 28 - 9:30 - 4:30 - Attended Melzer's
Education Coalition / day long Saturday
seminar - on educational concerns - funds
Representative from all counties there
and roster of excellent, challenging speakers
for the all-attendee presentation.
Additionally series of workshops held.
I served on the panel that addressed
accessing the media.

8 PM - Lifesong - station sponsored

June 3rd -

11 AM -

Rebecca Warren - assist. M. James
Cordin in for Humanitarian Dinner

June 4th

8:30

Attended adult service committee - Family
and Children - for staff review of need of
and service gaps for elderly population
in Central Maryland

11:30 AM -

Met with Elmer - view of Food Committee

June 5th

8 PM

NCCU Reception for Student Winners in
Channel 2 Brotherhood/Sisterhood Week
Essay/Poetry Contest conducted in phone in
Central Md. public, private & parochial schools

7:30

Associated Black Churches Reception

and Channel 2 received organizations - 1st Made

Award for Television - ~~the church magazine~~

received 1st award - Annie honored

CHECK

DONOR

STANLEY

June 6th

Victorine

O. Adams

Humanitarian Award

Dinner - Recipients Kwesi M. Lum

and Ben Cordin. Beverly Parker

Emcee - Conducted by Paul Ford

Janet Covington, president.

(over)

June 20th 1:30 Met with Bill Klinger - ^{representing Girl Scouts} to discuss Girl Scouts and campaign concept

June 25th 5 PM YWCA committee meeting

June 26th 10 AM Policy Committee - F.F.C.M. Inc.

5:30 attended YMCA Druid Hill Y meeting
stations honored for special PSA produce
and used with frequency. Druid Hill Y
credited PSA with ~~significantly~~ increasing memberships at newly renovated inner
city facility. House of Representatives

June 27th Noon Family + Childrens Board meeting

(Emily's ^{date} calendar) Meeting with Jan Baird, Dorothy Cruz
Anne Greener of Baltimore League of
Women Voters re: Mayoral debate
Also Voter Registration Countdown PSA
campaign (last day "X" day left to register)

5 PM Metro Classic Committee recap of
event - (station TV sponsor - Paul
Farrington) and timetable for '92 Committee
meetings + deadlines

June 28th F.F. Inc. Policy Mtg

June 29th Evening - Glenn Arley concert - Channel 2
sponsor - we promoted in PSA's + handbills
+ the Morgan Community connection

July 1st 3:30 P.R. Committee - Md Chamber of Commerce
discussed presentation of publicist of
merger with MEGA! Jack Feltz, chair

July 10th 3 PM Meeting with Bulletin rep. Judy Holland +
Margaret Gaines - literacy

4:30 pm NCCJ board mtg Channel 2 - discussed
newel hours in community + strategies to combat
July 14th 2:15 Metro Mary McKelvey Burgess Foundation
re: PSA + pgm ideas

July 18th 10:30 Met with Bonnie Tecker re: Family + Child
Care re: campaign + children

EXHIBIT 3

JAMES COVINGTON'S
original notes
to me regarding
appointments /
as commitments
She did not save her original
calendar /

RECEIVED

DOCKET FILE COPY ORIGINAL

SEP 26 1994

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)	MM Docket No. 93-94
)	
Scripps Howard)	File No. BRCT-910603KX
Broadcasting Company)	
)	
For Renewal of License of)	
Station WMAR-TV,)	
Baltimore, Maryland)	
)	
and)	
)	
Four Jacks)	File No. BPCT-910903KE
Broadcasting, Inc.)	
)	
For a Construction Permit for)	
a New Television Facility on)	
Channel 2 at Baltimore, Maryland)	
)	
To: The Honorable Richard L. Sippel		
Presiding Administrative Law Judge		

**OPPOSITION TO REQUEST FOR PERMISSION TO
FILE AN APPEAL OF THE ORDER DENYING THE
REQUEST FOR ISSUANCE OF A SUBPOENA DUCES TECUM**

1. Less than three weeks before the hearing in this matter is scheduled to commence, Four Jacks Broadcasting, Inc. ("Four Jacks") requested that the Presiding Judge issue a subpoena duces tecum requiring National Broadcasting Company ("NBC") to produce documents that Four Jacks became aware of no later than July 16, 1993. The Presiding Judge appropriately denied this last-minute request because, among other things, Four Jacks could have sought the subpoena three months ago, and issuing it now could cause disruption and delay. Similarly, permitting an appeal to the Commission less than two weeks before the hearing is scheduled to commence would be even more likely to cause disruption and delay.

Federal Communications Commission

Docket No. 93-94 Exhibit No. 33

by Four Jacks

Identified 9/8/94

Received _____

Rejected 9/8/94

Reporter Paula M. Kelly

Date 9/8/94

33
4 Jacks
Reported

Four Jacks' Request for Permission to File an Appeal of the Order Denying the Request for Issuance of Subpoena Duces Tecum ("Request for Permission to File and Appeal"), therefore, should be denied.

2. According to Four Jacks, the basis for its subpoena request is the testimony of the Acting General Manager of WMAR-TV, Emily Barr, in her July 16, 1993 deposition. At that time, Ms. Barr testified that she contacted NBC for its records relating to certain programming that was broadcast on WMAR-TV during the license term. Ms. Barr also testified on July 16 that she did not retain copies of her written request to NBC. See Deposition of Emily Barr, excerpts of which are attached to Four Jacks' Request for Issuance of Subpoena Duces Tecum, at 108-09.¹

3. Four Jacks, therefore, was aware of the possible existence of the documents sought by the subpoena and that those documents were not in the possession of WMAR-TV over three months ago (and prior to the close of discovery in this matter on July 30, 1993). Yet, Four Jacks offered no explanation, either in its Request for Issuance of Subpoena Duces Tecum or in its Request for Permission to File an Appeal, as to why it waited until the eve of the hearing before requesting this subpoena.

4. Furthermore, an appeal at this time would likely delay resolution of this matter and, therefore, prejudice WMAR-TV. First, as the Presiding Judge pointed out in his Order denying Four

¹ Four Jacks statement in ¶ 2 of its Request for Permission to File an Appeal that it has been told that "many documents relevant to this proceeding that should have been in Scripps' files . . . were either missing or destroyed" is entirely uncalled for and has no relevance to the pending issue.

Jacks' subpoena request, if a subpoena is issued to NBC, there may be a motion to quash that subpoena. This alone could disrupt the proceedings and cause significant delay. Second, as the Presiding Judge also noted, Four Jacks' subpoena seeks documents for a broad time period that may or may not exist. Even if the subpoena were issued, a search for the documents is likely to take some time and cause delay. Finally, the process of appealing to the Commission is itself time consuming, and is highly unlikely to conclude before the hearing in this matter is scheduled to commence. In fact, there is no way to be certain about the length of the delay that would be caused by granting Four Jacks' Request for an Appeal because the Rules do not prescribe a time limit within which the Commission must make a decision. In light of these factors, it is difficult to see how an appeal to the Commission would not, despite Four Jacks' claim, delay the proceedings.

5. Consequently, if Four Jacks' Request for Permission to File an Appeal were granted, the distraction and likely delay would significantly prejudice WMAR-TV in this proceeding.

WHEREFORE, Scripps Howard Broadcasting Company respectfully requests that the Request for Permission to File an Appeal of the Order Denying the Request for Issuance of Subpoena Duces Tecum filed by Four Jacks Broadcasting, Inc. be denied.

Respectfully submitted,

Scripps Howard
Broadcasting Company

By: 

Kenneth C. Howard, Jr.
Leonard C. Greenebaum
David N. Roberts
Stephanie S. Abrutyn

Its Attorneys

BAKER & HOSTETLER
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1500

Dated: October 26, 1993

Certificate of Service

I, Ruth Omonijo, a secretary in the law offices of Baker & Hostetler, hereby certify that I have caused copies of the foregoing "Opposition to Request for Permission to File an Appeal to the Order Denying the Request for Issuance of a Subpoena Duces Tecum" to be hand-delivered this 26th day of October, 1993 to the following:

The Honorable
Richard L. Sippel
Presiding Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 218
Washington, DC 20554

Martin R. Leader, Esq.
Fisher Wayland Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, DC 20037
Counsel to Four Jacks
Broadcasting, Inc.

Norman Goldstein
Hearing Branch-Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Room 7212
Washington, DC 20554

Robert Zauner
Hearing Branch-Mass Media Bureau
Federal Communications Commission
2025 M Street, NW
Room 7212
Washington, DC 20554


Ruth Omonijo

SEP 26 1994

Declaration of Emily L. Barr

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

I, Emily L. Barr, based on my personal knowledge, state the following:

1. I am Assistant General Manager of Station WMAR-TV, which is owned by Scripps Howard Broadcasting Company.

2. In October, 1993, Kenneth C. Howard, Jr., an attorney with Baker & Hostetler telephoned me and requested that I review my files again to ensure the accuracy of my deposition statement that I did not have the facsimile that I sent to NBC in August 1992 listing the issues about which WMAR-TV was seeking records.

3. In response to Mr. Howard's request, I immediately looked for and, to my surprise, located two facsimiles, in a file between other documents. The facsimiles that I located were the facsimile that Mr. Howard was seeking and the facsimile that I received back from Nancy Cole, Director of Archives, NBC News, attaching a sample of the type of information that was available. A copy of the facsimile that I sent to NBC is attached hereto as Exhibit 1, and a copy of the facsimile that I received from NBC is attached hereto as Exhibit 2.

4. Immediately after I located the facsimiles, I sent a copy of the facsimile that I had sent to NBC to Mr. Howard via facsimile. To the best of my knowledge, the date on the facsimile cover sheet and the line on the top of the facsimile received by Mr. Howard, see Exhibit 1, accurately represent the date and time that I sent him the documents.

5. Shortly thereafter, at his request, I also sent Mr. Howard a copy of the facsimile that I had received from NBC in